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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44040
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2011-11267
)	
MICHAEL THOMAS HAYES,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE DEBORAH A. BAIL
District Judge

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**PRO SE
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STATEMENT OF THE CASE

Nature Of The Case

Michael Thomas Hayes appeals from the district court's order denying his I.C.R. 35 motion.

Statement Of The Facts And Course Of The Proceedings

In September 2011, Hayes pled guilty to felony driving under the influence. (R., pp.32, 41-43; #41952¹ 9/12/11 Tr., p.5, L.6 – p.18, L.17.) The district court imposed a unified 10-year sentence with two years fixed. (R., pp.41-43.) The district court also ordered that Hayes pay \$240 in restitution for the blood draw and state lab work performed in the case. (R., pp.45-46.) Hayes did not appeal from either the judgment of conviction or the restitution order.

In January 2016, Hayes filed a *pro se* I.C.R. 35 motion for “correction of sentence.” (R., pp.47-54.) In the motion, Hayes appeared to argue that the Idaho Department of Correction wrongfully pursued restitution from him for the cost of the presentence investigation, blood draw, and lab tests. (Id.) Specifically, Hayes argued that, while the state requested that \$240 in restitution be ordered, the district court “did not order any reimbursement for the cost of the PSI,” and failed to “verbalize” the “cost of restitution for the blood draw/labs.” (R., p.49 (emphasis omitted).)

¹ The Idaho Supreme Court took judicial notice of the clerk's record and transcripts associated with Hayes' previous appeal, #41952, in which Hayes challenged the district court's summary denial of his post-conviction petition. (4/4/16 Order.)

The district court denied the motion. (R., pp.55-56.) The court concluded that Hayes failed to demonstrate that his sentence was illegal pursuant to I.C.R. 35(a), and that the motion was untimely pursuant to I.C.R. 35(b) to the extent Hayes was attempting to argue that his sentence was imposed in an illegal manner. (Id.) Hayes timely appealed. (R., pp.57-61.) The district court denied Hayes' motion for appointment of counsel to represent him in the appeal. (R., pp.83-86.) The Idaho Supreme Court denied Hayes' subsequent motion for appointment of counsel. (5/23/16 Order.) Hayes proceeds *pro se*.

ISSUES

Hayes states the issues on appeal as:

1. Did the District Court fail to understand Hayes' I.C.R. 35 motion and properly review the record before denying this motion?
2. Where is the threshold between the Criminal Due Process stopping and the beginning [sic] of the Civil Remedies process in connection to Criminal Restitution lie?

In this connection, is Hayes entitled to an I.C.R. 35(a) motion as asked for?

3. Did the District Court properly render its Order of Restitution?

Did the District Court rely on a "Plea Bargain" made by the State when it Ordered Restitution in this case?

(Appellant's brief, p.8 (verbatim).)

The state rephrases the issue on appeal as:

Has Hayes failed to show that the district court erred in denying his I.C.R. 35 motion?

ARGUMENT

Hayes Has Failed To Show That The District Court Erred In Denying His I.C.R. 35 Motion

A. Introduction

Hayes contends that the district court erred by denying his I.C.R. 35 motion. (See generally Appellant's brief.) Hayes' argument fails because his motion did not challenge the sentence imposed upon his guilty plea to felony driving under the influence, but instead asserted that the Idaho Department of Correction's post-judgment attempts to recover restitution from him were unlawful. (See id.) The district court therefore did not err in concluding that Hayes' arguments and requested relief were outside the scope of an I.C.R. 35 motion, or by denying Hayes' motion.

B. Standard Of Review

"As a general matter, it is a question of law as to whether a sentence is illegal or was imposed in an illegal fashion, and this Court exercises free review over questions of law." State v. Lute, 150 Idaho 837, 839, 252 P.3d 1255, 1257 (2011) (citing State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009)).

C. Hayes Has Failed To Show That The District Court Erred In Denying His I.C.R. 35 Motion

Idaho Criminal Rule 35(a) is a narrow rule that allows a trial court to correct a sentence that is illegal from the face of the record at any time. Clements, 148 Idaho at 84, 218 P.3d at 1145. "[T]he term 'illegal sentence,' as utilized by I.C.R. 35(a) is narrowly interpreted as a sentence that is illegal from

the face of the record, i.e., does not involve significant questions of fact or require an evidentiary hearing.” Id. at 86, 218 P.3d at 1147. Rule 35(a) “is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal.” Id. (citation omitted). “[R]ather, the rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law or where new evidence tends to show that the original sentence was excessive.” Id.

Idaho Criminal Rule 35(b) permits a district court to correct a sentence that has been imposed in an illegal manner. Motions to correct or modify sentences made under this subsection of the rule must be filed within 120 days of the entry of the judgment of conviction. I.C.R. 35(b).

In this case, Hayes’ I.C.R. 35 motion did not specify whether he sought relief pursuant to I.C.R. 35(a) or (b). (See R., pp.47-54.) Further, Hayes did not allege either that his sentence was illegal, or that his sentence was imposed in an illegal manner. (See id.) Nor did Hayes request that his sentence be reduced. (See id.) Instead, Hayes asserted that, after the judgment of conviction was entered, the Idaho Department of Correction wrongfully sought restitution from him. (Id.)

The district court properly denied the motion. (R., pp.55-56.) The court first concluded that to the extent Hayes sought relief pursuant to I.C.R 35(b), his motion, filed more than four years after his judgment of conviction was entered, was clearly untimely. (R., p.55.) The district court also correctly concluded, in the alternative, that the allegations raised by Hayes were outside the scope of

I.C.R. 35(a), and that if Hayes “has an issue with costs that the Department of Corrections [sic] is trying to recover from him, he needs to take it up with the Department.” (Id.) The district court’s conclusion was correct because, as discussed above, Hayes did not allege that his sentence for felony driving under the influence was unauthorized by law, or that the face of the record otherwise demonstrated that his sentence was illegal.² Therefore, Hayes has failed to demonstrate error.

In his Appellant’s brief, Hayes also attempts to clarify some of the arguments allegedly raised in his I.C.R. 35 motion that were not specifically addressed by the district court. Specifically, Hayes appears to allege that the restitution order entered by the district court is invalid for two reasons: (1) the court did not mention restitution in its oral pronouncement of Hayes’ sentence during the sentencing hearing; and (2) the plea agreement between Hayes and the state, which included Hayes’ agreement to pay restitution, was withdrawn by the state prior to sentencing after the presentence investigation revealed the full extent of Hayes’ criminal history. (Appellant’s brief, pp.10-23; see also #41952 10/24/11 Tr., p.21, L.7 – p.22, L.5.) Even to the extent this argument is preserved for appeal,³ it fails. Relief from a restitution order cannot be pursued by a motion to reduce or correct a sentence pursuant to I.C.R. 35. State v.

² Further, Hayes’ claim that he was unaware that any restitution would be ordered (R., pp.49-52), is belied by the record. At the sentencing hearing, Hayes’ counsel expressly declined to object to the \$240 in restitution requested by the state. (#41952 10/24/11 Tr., p.22, L. 19 – p.23, L.1.) This is exactly the amount of restitution subsequently ordered by the court. (R., pp.45-46.)

³ Generally, issues not raised below may not be considered for the first time on appeal. State v. Fodge, 121 Idaho 192, 195, 824 P.2d 123, 126 (1991).

Ferguson, 138 Idaho 659, 661, 67 P.3d 1271, 1273 (Ct. App. 2002) (citing State v. Bybee, 115 Idaho 541, 544, 768 P.2d 804, 807 (Ct. App. 1989)). Therefore, just as the district court concluded (R., pp.55-56), such an argument is outside the scope of I.C.R. 35.

Hayes has failed to demonstrate that the district court erred in denying his I.C.R. 35 motion. This Court should therefore affirm the district court's denial order.

CONCLUSION

The state respectfully requests this Court to affirm the denial of Hayes' I.C.R. 35 motion.

DATED this 21st day of September, 2016.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 21st day of September, 2016, caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

MICHAEL THOMAS HAYES
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/s/ Mark W. Olson
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Deputy Attorney General

MWO/dd